

No. 4104.

IN THE
United States
Circuit Court of Appeals,
FOR THE NINTH CIRCUIT.

G. W. Brainard, Trustee in Bankruptcy of the Pacific Co-operative League Stores Inc., a Corporation,

Appellant,

vs.

San Diego Co-operative Association,

Appellee.

PETITION FOR REHEARING.

W. T. CRAIG,

JOSEPH KIRK,

NORMAN A. BAILIE,

Attorneys for Appellant.

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Comes now G. W. Brainard, trustee in bankruptcy of the Pacific Co-operative League Stores Inc., a corporation, and respectfully petitions the court for a rehearing of the above entitled cause on the following grounds:

1. That no showing was made that appellee has any interest in the stores in question.

2. That at least fifty per cent. of the holders of loan capital certificates have exchanged them for stock in the Pacific Co-operative League Stores Inc.

3. That the appellee and the holders of loan capital certificates are estopped from claiming title as against the trustee in bankruptcy by their conduct in holding out the corporation to the world as the owner of the stores.

4. That as a creditor "holding a lien by legal or equitable proceedings" the trustee in bankruptcy has a right to said assets superior to appellee or the holders of loan capital certificates.

5. That credit was extended to the bankrupt corporation and its predecessor in interest by many firms throughout the state of California on the strength of the ownership of said stores.

I.

The testimony all shows and the special master found [Tr. p. 29 & 46], that all subscriptions were made as individuals and not as an association, and there is neither evidence nor finding of any interest of the San Diego Co-operative Association in the litigation or in the stores. We contend that said association has no capacity to sue.

II.

The evidence shows that at least four members of the board of directors of the local association had knowledge at all times that these stores were being held out to the world as the property of the Pacific Co-operative League Stores Inc., [Tr. p. 97, testimony of Walter Huggins; Tr. pp. 115-116 testimony of J. N. Bischoff; Tr. 120, testimony of Walter Barnes; Tr.

p. 123, testimony of John S. Seibert; Tr. p. 127, testimony of Nora White Simpson.]

III.

The court in its opinion seems to have overlooked the fact that the Pacific Co-operative League has a great many creditors besides the San Diego creditors, and, that the result of the decision is to deprive these creditors of their rights in the premises. These stores all had signs on them which read, "San Diego Branch Pacific Co-operative League Store No. 1, Store No. 2, Store No. 3" respectively, thus proclaiming to the world that the stores were owned by the corporation and not by the local association. [Tr. p. 85.]

If the only creditors to be considered were the creditors of the San Diego stores there might be no great harm done by the court's ruling. But what of the creditors whose claims are general claims against this bankrupt concern such as H. A. Floatin with his four thousand (\$4,000.00) dollar claim [Tr. p. 134]? Surely these general creditors have some rights in the premises which the court is bound to protect as against these people who allowed the corporation to obtain credit on the faith of its ownership in these stores. Even the San Diego creditors were referred to San Francisco for credit information [testimony of C. O. Relstoff, Tr. p. 105]. The president of the local association at all times knew that the Pacific Co-operative League was operating a number of stores throughout the country [testimony of J. N. Bischoff, Tr. pp. 111, 112]. Money was borrowed by the corporation [testimony of H. H.

Dobbs, p. 138]. What is to become of the rights of these general creditors if the court's decision is allowed to stand?

It seems to appellant that there has been proven a clear case of estoppel against the subscribers to "loan capital," by their holding out the corporation, for a year and a half as the owner of these stores while creditors were advancing credit on the faith of such ownership.

IV.

The trustee stands in the position of a creditor holding a lien by legal or equitable proceedings. If any creditor could maintain an attachment or execution against these stores over the third party claim of the local association, then the trustee is entitled to the property. The San Diego creditors, by the court's own ruling, have such a right. But in what way are their rights superior to those of H. A. Floatin, or any other creditor? They are all general creditors of the Pacific Co-operative League [testimony Walter Huggins, pp. 96, 97]. All claims of San Diego creditors are against the Pacific Co-operative League.

There is no escaping the conclusion that if the decision of the court stands, the San Diego Co-operative Association, comprising presumably one-half of the subscribers of "loan capital" will get these stores free and clear and the creditors' rights will not be protected. They never sold the San Diego Co-operative Association any goods and are complete strangers to them.

Respectfully submitted,

W. T. CRAIG,

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NORMAN A. BAILIE,

Attorneys for Appellant.

Due service of the within, and receipt of a copy thereof, is hereby admitted this. 21. day of April, A. D. 1924.

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